Office-Supreme Court, U.S.
FILED
JUL 17 1981
ALEXANDER L. STEVAS,
CLERK

No. 81-4

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

PRAMAN CHIRAVACHRDHIKUL
a.k.a. PRAMAN CHIRAVACHARDHIKUL

PETITIONER,

v.

IMMIGRATION AND NATURALIZATION SERVICE

RESPONDENT

SUPPLEMENTAL APPENDIX

PETITION FOR WRIT
OF CERTIORARI TO
THE UNITED STATES
COURT OF APPEALS
FOR THE FOURTH
CIRCUIT

Frank J. Ceresi
Attorney for Petitioner
2060 North 14th Street
Arlington, Virginia 22201
703-524-1900

INDEX TO SUPPLEMENTAL APPENDIX

Oral decision of the
Immigration Judge.....1a

Decision of the
Board of Immigration
Appeals.....5a

Order Denying
Petition for Rehearing
and Suggestion for
Rehearing En Banc.....10a

Order Denying Stay.....11a

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

File: A35 527 287 - Washington, D.C.-

In the Matter of)
)
Praman CHIRAVACHARADHUKUL) IN DEPORTATION
)PROCEEDINGS
Respondent)

CHARGE: I&N Act - Section 241 (a) (11) Convicted of a violation of law relating to the illicit traffic on a narcotic drug controlled substance, to wit: cocaine, in violation of Title 21 United States Code Section 841(a).

APPLICATION: Section 212 (c) and in the alternative voluntary departure.

IN BEHALF OF RESPONDENT

Frank J. Ceresi
2060 North 14th St #209
Arlington, Va. 22201

IN BEHALF OF SERVICE

Ernest Hupp, Esq.
Trial Attorney
Washington, D.C.

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a 28 year-old married male alien, native and citizen of Thailand. Through counsel he admits as the Order to Show Cause alleges, that

he entered the United States at Washington, D.C. on or about February 28, 1977 at which time he was admitted as an immigrant. He also admits through counsel that on March 21, 1978, he was convicted in the United States District Court for the District of Columbia, Washington, D.C. for distribution of cocaine as schedule 11 narcotic drug controlled substance in violation of Title 21 United States Code Section 841 (a). Deportability under Section 241 (a)(11) of the Immigration and Nationality Act is also conceded in that at any time he had been convicted of a violation of any law or regulation relating to illicit traffic in a Schedule 11 narcotic drug controlled substance, to wit: cocaine, in violation of Title 21 United States Code Section 841 (a).

Government has submitted Exhibit 2 in these proceedings which is the Immigrant visa with which the respondent was admitted to the United States, Exhibit 3, which is a certified copy of the record

of the conviction. Based upon this I do find that the respondent is deportable as charged. Since the respondent has been convicted of a crime involving moral turpitude I find that he is ineligible for the relief of voluntary departure under Section 244 (e) of the Immigration and Nationality Act. Additionally, I find that he is not eligible for the privilege of Section 212 (c) of the Immigration and Nationality Act. Counsel raised the issue and I have determined that the respondent is statutorily ineligible for such relief based upon the rulings of the Board of Immigration Appeals, and such application has not been accepted.

The respondent has designated Thailand as the country of deportation. ORDER: IT IS ORDERED that the respondent be deported from the United States to Thailand on the charges contained in the Order to Show Cause.

/s/
Emil Bobek
IMMIGRATION JUDGE

UNITED STATES DEPARTMENT OF JUSTICE

BOARD OF IMMIGRATION APPEALS

WASHINGTON, D.C. 20503

File: A35 527 287 - Washington, D.C.

In re: PRAMAN CHIRAVACHARDHIKUL

APPEAL

ON BEHALF OF RESPONDENT:

Frank J. Ceresi
2060 North 14th Street #208
Arlington, Virginia 22201

ON BEHALF OF SERVICE:

Donald Convillon, Esquire
Trial Attorney

CHARGE:

Order: Sec. 241(a)(11), I&N Act (8 U.S.C. 1251(a)(11)- Convicted of a violation of law relating to the illicit traffic in a narcotic drug controlled substance, to wit: cocaine

APPLICATION: Waiver of deportability under section 212(c) of the Immigration and Nationality Act

This case presents an appeal from a

immigration judge 1/ finding the respondent deportable and denying his application for relief under section 212(c) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1182(c). The immigration judge ordered that the respondent be deported to Thailand. The appeal will be dismissed.

The respondent is a native and citizen of Thailand, age 29, who last entered the United States at Washington, D.C., as an immigrant on or about February 28, 1977. He is married but was separated from his wife at the time of the hearing. The respondent was convicted in the United States District Court for the District of Columbia in March 1978, for distribution of cocaine, a schedule II narcotic drug controlled substance, in violation

1/ The decision of the immigration judge is dated April 4, 1979, which obviously is in error since the appeal was taken on September 19, 1978, following the hearing conducted on September 13, 1978.

of Title 21, United States Code, Section 841(a). The respondent's one to five year sentence was suspended and he was placed on probation for a period of three years (Ex. 3). Deportability has been established by clear, convincing and unequivocal evidence.

The immigration judge found that the respondent is statutorily ineligible for relief under section 212(c) of the Act, "based upon the rulings of the Board." In urging reversal of the immigration judge's denial of a waiver of deportability, counsel stated, and correctly so, "We, of course, concede that section 212(c) relief is descretionary" (Br. p. 13).

We agree with the immigration judge's denial of section 212(c) relief. In Matter of Silva, Interim Decision 2532 (BIA 1976), we held that a subject of deportation proceedings may apply for a waiver of deportation under section

212(c) of the Act which provides , in pertinent part:

> Aliens lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation, and who are returning to a lawful unrelinquished domicile of seven consecutive years, may be admitted in the discretion of the Attorney General without regard to the provisions of paragraphs (1) through (25) and paragraphs (30) and (31) of subsection (a)....

Although the statute describes a waiver available to an alien seeking to enter the United States, we have held that section 212(c) relief may be granted in deportation proceedings to a nondeparting permanent resident alien with seven consecutive years of lawful unrelinquished domicile. See Matter of Silva, supra; see also Francis v. INS, 532 F.2d 268 (2 Cir. 1976).

The record establishes and we find that the respondent does not have the requisite period of continuous lawful

unrelinquished domicile in the United States. See Matter of Newton, Interim Decision 2733 (BIA 1979) and cases cited therein. In any event, section 212(c) does not provide an indiscriminate waiver for all who demonstrate statutory eligibility for such relief. Even if the respondent were eligible, we would not grant him section 212(c) relief in view of his involvement in distributing cocaine. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

Chairman

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 80.-1479

Praman Chiravachardhikul
a.k.a. Praman Chiravacharadhijul,

Petitioner,

versus

Immigrational and Naturalization Service,

Respondent.

O R D E R

Upon consideration of the Petitioner's petition for rehearing and suggestion for rehearing en banc, and no judge having requested a poll on the suggestion for rehearing en banc,

It is ADJUDGED and ORDERED that the petition for rehearing is denied.

Entered at the direction of Judge Bryan for a panel consisting of Judge

Haynsworth, Judge Bryan, and Judge Widener.

For the Court,

/s/ William K. Slate, II
Clerk

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 80-1479

Praman Chiravacharadhikul
a.k.a. Praman Chiravacharadhijul,

Petitioner,

versus

Immigration and Naturalization Service,

Respondent.

Appeal from the United States Department of Justice, Board of Immigration Appeals.

Upon consideration of a motion of the petitioner, by counsel, for stay of mandate pending application to the Supreme Court of the United States for a writ certiorari,

IT IS ORDERED that the motion is DENIED.

For the Court - by

Direction.

/s/ William K. Slate, II
CLERK